IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CHAMBER SUMMONS NO.497 OF 2005
IN
EXECUTION APPLICATION (L)NO. 71 OF 2005
IN
SUIT NO. 258 OF 1994

Virendra Shamjibhai Gala ...Plaintiff
vs.
M/s. Tulsi Construction and
Associates and Ors. ....Defendants

C. Balsara i/b. M/s. Harakchand and co. for the plaintiffs/applicant.

V.Y. Sanglikar i/b. R.P. Singh for defendant no.1.

CORAM: S.U. KAMDAR, J.

DATE : 12TH APRIL, 2005.

P.C. :

. By consent of the parties the chamber summons is taken on board and called out.

2. Learned counsel appearing for the defendant no.1 states that he desires that the present chamber summons should be finally disposed off at the ad-interim stage itself. The plaintiffs have no objection. Accordingly the present chamber summons

is taken up for final hearing at this stage itself.

3. The present chamber summons is taken out to execute the decree dated 6.3.1996. In the present case we are concerned with clause-21 of the consent terms. The said Clause-21 reads as under :

> "21. ORDERED that in the event if the plaintiff commits default in handing over quiet, vacant and peaceful possession of the tenanted premises in the Plaintiff's use and occupation within a period of 30 days from the date the defendants offer possession of the said permanent alternate accommodation as per these consent terms then in that event from the date of expire of the said period of 30 days of such intimation the Plaintiff shall pay to the defendants a sum of Rs.3,000/- per day as liquidated damages for delay in handing over the possession of the said tenanted premises by the plaintiffs to the defendants and which amounts calculated a the rate of

Rs.3,000/- per day shall be recoverable by the defendants from the Plaintiff and the Plaintiff agrees and undertakes to pay the same to the defendants."

4. Under clause-21 of the said consent terms it is inter-alia provided that in an event of any default committed in handing over quiet, vacant and peaceful possession of the tenanted premises which is in use within thirty days from the date the defendant offers him permanent alternate accommodation in accordance with the said consent terms then in that event the plaintiff will be liable to make payment of Rs.3000/- per day towards the liquidated damages for delay in handing over possession thereof.

5. It is the case of the defendant that by letter dated 10.10.1998 the defendant offered the premises as and by way of permanent alternate accommodation in accordance with clause-21 of the said consent terms and called upon the plaintiff to vacate the tenanted premises which was in use, occupation and

possession. It is also an admitted position that the said premises was not vacated within a period of thirty days from the date of the letter dated 10.10.1998. However according to the learned counsel for the plaintiff he could not vacate the premises and occupy the permanent alternate accommodation offered by the defendant because there was no valid occupancy certificate issued by the concerned municipal authority.

6. In the aforesaid light of the facts further proceedings were initiated by the plaintiff by way of notice of motion in the present suit and ultimately by an order dated 27.9.1999 the learned single judge directed the concerned municipal authority to rectify the occupation certificate and further the learned single judge recorded the undertaking of the defendant that he will comply with all the terms of the occupation certificate. By the said order dated 27.9.1999 the learned judge also extended the time for handing over possession by a period of four weeks from the date of the said order. The relevant portion of the said order reads

as under :

> . "Plaintiff is at liberty to take possession of the suit premises against vacating the existing premises and handing over the same to the defendants. The period to handover possession is extended by four weeks."

7. Pursuant to the said order the plaintiffs have vacated the said premises within a period of four weeks on 14.10.1999 and handed over vacant and peaceful possession of the premises to the defendant herein. The plaintiff thereafter sought to execute the decree by claiming certain amount towards the liquidated damages. The learned single judge of this court, Dharmadhikari, J by an order dated 7.7.2004 inter-alia held that the plaintiff is not entitled to execute the decree for liquidated damages. He has come to the conclusion that there were defaults on part of both the parties and thus the plaintiff is not entitled to claim for any liquidated damages. However he has further held that the dispute between the parties have come to an end and settled by an order of Shah, J dated 22.9.1999 and in view of the same all issues which

were pending have come to an end. the relevant portion reads as under :

> . "In my view, this proceeding brought an end to any issue/s that were outstanding. It has been the case of the plaintiff that the consent terms obliged obtaining part occupancy/occupancy certificate and handing over possession of the premises."

8. After taking over possession of the said tenanted premises on 14.10.1999 now the defendants are seeking to execute the decree once again by contending that the plaintiffs did not hand over vacant and peaceful possession of the said premises within a period of 30 days from the date of the said letter dated 10.10.1998.

9. In my view the said contention of the defendant is without any merits. The defendant is not entitled to execute the decree in so far as

clause-21 of the said consent terms is concerned. The time stipulated to vacate the possession of the premises stood extended by an order passed by Shah, J and as rightly held by the learned single judge, Dharmadhikari, J that all the disputes between the parties stood settled by the aforesaid order of Shah, J dated 27.9.2004. In view thereof the question of executing the decree by enforcing the claim for liquidated damages as provided under Clause-21 of the said consent terms does not arise. The execution application taken out by the defendant for executing the said decree is only in respect of Clause-21 of the consent terms. In the aforesaid circumstances chamber summons made absolute in terms of prayer clause (a) and (b). No order as to costs.

sd/-

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